

Fair Political Practices Commission

Memorandum

To: Chairman Randolph and Commissioners Blair, Downey, Karlan and Knox

From: Kelly L. Winsor, Legal Analyst, Legal Division
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Subject: Annual Technical Clean-Up Packet -
Repeal of 2 Cal. Code Regs. section 18361;
Renumbering and amendment of 2 Cal. Code Regs. section 18361.5 to
Section 18361.9;
Adoption of 2 Cal. Code Regs. sections 18361.1, 18361.2, 18361.3,
18361.4, 18361.5, 18361.6, 18361.7 and 18361.8;
Amendment of 2 Cal. Code Regs. sections 18406, 18450.4, 18702.2,
18702.5, 18740, 18747, 18754 and 18951

Date: August 13, 2004

Executive Summary

Commission staff periodically conducts a review of Commission regulations to keep them current. Several technical “clean-up” amendments are proposed which eliminate outdated references or make similar conforming changes. Although the proposed amendments are technical in nature, the proposed regulatory amendments have been noticed to the public. As of the date of this memorandum, no public comments have been received. Staff recommends adoption of the proposed amendments and new regulations.

Overview of the Specific Regulations

Repeal 2 Cal. Code Regs. section 18361, renumber 2 Cal. Code Regs. section 18361.5 to 18361.9 and adopt 2 Cal. Code Regs. sections 18361.1 through 18361.8: Sections 83115-83116.5, 83118 and 91001 of the Political Reform Act (the “Act”) set forth the procedural parameters for enforcement of the Act. Current regulation 18361 was adopted to interpret and implement the requirements of sections 83116-83116.5, 83118, and 91001. Current regulation 18361 is a broad regulation that governs all aspects of Enforcement Division proceedings.

Staff proposes repealing regulation 18361 and adopting eight separate regulations (regulations 18361.1 through 18361.8) corresponding to each of the subsections of current regulation 18361.

Additionally, staff proposes amending current regulation 18361.5, dealing with the Commission's consideration and reconsideration of proposed decisions issued by the Office of Administrative Hearings, to renumber the regulation to 18361.9 so that it is the final regulation in the resultant series of regulations governing enforcement. These changes will not substantively affect the regulations, but will facilitate the understanding, citation, and use of the regulations by the public, Commission staff, and the regulated community.

Amend 2 Cal. Code Regs. section 18406(b): Under regulation 18406(b), the Form 470 Supplement is supposed to be triggered if a candidate raises \$1,000 after filing the short form in connection with his/her election. Because of the March election, candidates file the declaration of candidacy in December. The new filing officer in San Francisco had candidates file the Form 470 with their declaration of candidacy, but had them file the form for 2003, not 2004—the year of the election. This caused significant confusion for the San Francisco filers and staff believes a technical amendment to regulation 18406 will help clear up the confusion.

Amend 2 Cal. Code Regs. section 18450.4: Staff proposes adding the definition of “chronological sequence” for purposes of section 84503 to regulation 18450.4 to codify advice provided in *Olson* Advice Letter, No. A-04-045.

Amend 2 Cal. Code Regs. section 18702.2 as follows: Current regulation 18702.2 was former regulation 18700(c) until 1998 when it was restructured and renumbered as part of the Conflict of Interest Regulatory Improvement Project. The original regulation 18700 contained the word “or” between two subdivisions of the regulation. In 1994, regulation 18700 was amended and the word “or” was inadvertently left out of the paperwork filed with OAL. There was no instruction to delete the word “or” between the two subdivisions. The word “or” just disappeared from the text of the regulation. The omission of the word “or” between the two subdivisions changes the meaning of the regulation to require **both** subdivisions (a) and (b) to be present to meet the definition, when **either** subdivision (a) or (b) should be present to meet the definition.

Amend 2 Cal. Code Regs. section 18702.5: The addition of the phrase “and gives rise to the conflict of interest” should be added to regulation 18702.5(b)(1)(A) so that it reads:

“(1) The public official shall publicly identify:

“(A) Each type of economic interest held by the public official which is involved in the decision *and gives rise to the conflict of interest* (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and...”

This amendment would clarify that the public official does not need to publicly state **every** economic interest involved in the decision, only the one that is causing his or her recusal. Without this additional language, the regulation is unclear on this particular point.

Amend 2 Cal. Code Regs. section 18740: Current regulation 18740 provides that an “official” need not identify a fee-paying client on a Statement of Economic Interests, if disclosure of the name would violate a privilege recognized under California law.

A. Lavar Taylor, an attorney in private practice who was an unsuccessful gubernatorial candidate in the October 7, 2003, special election, requested an exemption from the Act’s general requirement that a candidate disclose every source of income on his Statement of Economic Interests. Under procedures established by regulation 18740, the Commission issued the Taylor Opinion, No. O-04-103, in which the Commission determined that candidate Taylor had established sufficient cause for the exemption from the disclosure requirements of Government Code section 87207(b)(2). Staff proposes adding the word “candidate” to regulation 18740 as a result of the Taylor opinion.

Amend 2 Cal. Code Regs. section 18747: The words “subject to Government Code section 87407” are redundant and should be deleted from subdivision (a) of the regulation. Also, the reference to regulation 18705.1 in subdivision (b)(2)(A) needs to be amended to reflect the changes in formatting made to regulation 18705.1. The reference currently in regulation 18747 refers to the indirect standard for business entities but retains the previous reference to subdivision (b), although the citation should be regulation 18705.1(c). Therefore, staff proposes amending subdivision (b)(2)(A) as follows:

“(A) For a business entity, the same as set forth in 2 Cal. Code Regs. section 18705.1(c).”

Amend 2 Cal. Code Regs. section 18754: The proposed amendment clarifies the exemption from disclosure for members of boards or commissions of newly created agencies, when the board or commission does not possess decision-making authority as defined in regulation 18701(a)(1).

Amend 2 Cal. Code Regs. section 18951: Staff proposes amending (a)(1) and (a)(2) to clarify that campaign funds must be transferred “no later than” the end of the postelection reporting period, rather than “prior to” that date. The current language is confusing in that the end of the post election reporting period is June 30 or December 31 and “prior to” that date means the candidate has to make the transfer no later than June 29 or December 30.

Attachments

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